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IN THE
COURT OF APPEALS OF INDIANA

MARK RICHMOND,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0607-CR-293
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0309-FA-25

March 29, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Mark Richmond (Richmond), appeals his sentence for Count I, rape, a Class B felony, Ind. Code § 35-42-4-1; Count II, criminal deviate conduct, a Class B felony, I.C. 35-42-4-2; Count III, burglary, a Class B felony, I.C. § 35-43-2-1; Count IV, confinement, a Class D felony, I.C. § 35-42-3-3; and Count V, habitual offender, I.C. § 35-50-2-8.

We reverse and remand with instructions.

ISSUE

Richmond raises one issue on appeal, which we restate as: Whether the trial court properly sentenced Richmond.

FACTS AND PROCEDURAL HISTORY

Sometime after midnight on September 18, 2003, Richmond arrived home to find his wife, DeeDee Richmond (DeeDee), in the kitchen. An argument ensued when DeeDee refused his sexual advances. The argument escalated when she informed Richmond she wanted a divorce. DeeDee decided it would be best if she left and took their baby with her. Richmond took her house key off her key ring making it impossible for her to reenter the marital residence after leaving. When Richmond would not return the keys, DeeDee called the police. Before the police arrived, DeeDee finished packing a bag for herself and the baby. When the police arrived they advised her not to worry about the keys. She took their advice and left with the baby. The two spent the night in a parking lot under the belief that Richmond would not be able to locate them, as he would if she took refuge at a friend or relative's home.

Later that morning, DeeDee's sister, Yvonne, awoke to Richmond's hand over her mouth and a knife to her neck. Richmond motioned for her to rise and directed her into the living room. Yvonne asked where DeeDee was, to which he responded, they had a fight and she was leaving him. He also told Yvonne that he had always wanted her and now he could have her while hurting his wife at the same time. Richmond proceeded to pull up Yvonne's slip and perform oral sex on her. Then he cut her underwear off with the knife and penetrated her with his penis. When Richmond left Yvonne called her mother and 911. Richmond entered Yvonne's home by cutting a screen in her daughter's bedroom window.

On September 19, 2003, the State filed an Information charging Richmond with Count I, rape, a Class A felony, I.C. § 35-42-4-1; Count II, criminal deviate conduct, a Class A felony, I.C. § 35-42-4-2; Count III, burglary, a Class B felony, I.C § 35-43-2-1; and Count IV, confinement, a Class D felony, I.C. § 35-42-3-3. The Information was later amended to include Count V, habitual offender, I.C. § 35-50-2-8.

February 27, 2006 through March 2, 2006, a jury trial was held. At the close of evidence the jury found Richmond guilty of Count I, rape, a Class B felony; Count II, criminal deviate conduct, a Class B felony; Count III, burglary, a Class B felony, Count IV, confinement, a Class D felony, and Count V, habitual offender. On March 21, 2006, a sentencing hearing was held. The trial court found two aggravating factors: (1) Richmond's criminal history which included four felony convictions and one misdemeanor conviction, and (2) Richmond violated the conditions of his probation by committing the instant offenses. Richmond was sentenced to twenty years on each of the

three Class B felonies and three years on the Class D felony, to be served consecutively, with a thirty year enhanced sentence for the habitual offender adjudication, totaling a sentence of ninety-three years.

Richmond now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Richmond claims his ninety-three year sentence is inappropriate. Specifically, he contends (1) the two aggravating factors found by the trial court are insufficient to support aggravated and consecutive sentences, and (2) that the trial court cannot rely on the same prior convictions used to find him guilty of being a habitual offender to additionally enhance his sentence. What Richmond does not argue is that the trial court failed to attach the habitual offender adjudication to a particular felony conviction. We *sua sponte* find this issue dispositive and will address its impact on Richmond's sentence.

The trial court imposed Richmond's sentence by treating the habitual offender as a separate conviction. This is incorrect. A habitual offender finding has no independent status as a separate crime and exists only as an integral part of a sentence imposed for a specific independent felony. *Roark v. State*, 829 N.E.2d 1078, 1080 n. 5 (Ind. Ct. App. 2005), *trans. denied*; *Anderson v. State*, 774 N.E.2d 906, 914 (Ind. Ct. App. 2002). The proper procedure would have been for the trial court to attach the habitual offender enhancement to either the rape, criminal deviate conduct, or burglary conviction. *See Hazzard v. State*, 642 N.E.2d 1368 (Ind. 1994).

This error is typically a technical difficulty that is classically remanded to the trial court to correct the sentence as it regards the habitual offender status. *See McIntire v.*

State, 717 N.E.2d 96, 102 (Ind. 1999). In this case, however, due to Richmond's contentions that the trial court's sentence is inappropriate, as the trial court cannot rely on the same prior convictions to find him guilty of being a habitual offender as to aggravate his sentence beyond the presumptive, we believe it is more than merely a technical difficulty. Therefore, we remand with instructions that the trial court provide a more explicit sentencing statement, including (1) to which felony conviction Richardson's habitual offender adjudication attaches, and (2) unambiguously provide which prior convictions were relied upon to aggravate and run his sentences consecutively, in addition to any other aggravators and mitigators recognized by the trial court.

CONCLUSION

Based on the foregoing, we find a review cannot be conducted as to whether Richmond's sentence is inappropriate based on the trial court's current sentencing statement.

Reversed and remanded with instructions to provide a more comprehensive sentencing statement.

KIRSCH, J., and FRIEDLANDER, J., concur.